

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of General Counsel

In the Matter of)
)
Amendment of Part 1 of the) WT Docket No. 97-82
Commission's Rules --)
Competitive Bidding Proceeding)

COMMENTS OF HUGHES ELECTRONICS CORPORATION

Hughes Electronics Corporation ("Hughes"), on behalf of the Hughes family of companies, submits these Comments in response to the above-captioned *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*.¹ Hughes is vitally interested in the Commission's proposals relating to the use of competitive bidding, particularly to the extent that those proposals may apply in the satellite context. For the reasons set forth below, the Commission should not auction spectrum for satellite services. To the extent that the Commission nevertheless determines to do so, it first should undertake a service-specific rulemaking to ensure that the use of competitive bidding is properly tailored to the highly capital-intensive satellite industry, and the Commission should adopt the further proposals described in these Comments.

¹ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (rel. Feb. 28, 1997) ("*Part 1 Notice*").

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I. Introduction

The Hughes family of companies has long been a leader in the field of domestic and international satellite communications. Hughes Space and Communications Company is a leading manufacturer of commercial and military communications satellites. Hughes Communications Galaxy, Inc. ("HCG") operates a fleet of in-orbit C and Ku band satellites that predominantly serve the United States, and, through Galaxy Latin America, provides direct-to-home satellite service to Latin America. In addition, HCG's Spaceway system is a global system that will provide interactive, broadband communications services to ultra small satellite terminals around the world. Hughes Network Systems, Inc. is a leading manufacturer of small satellite earth stations. DIRECTV, Inc. began operating the first true Direct Broadcast Satellite ("DBS") service in the U.S. in 1994. Finally, Hughes Telecommunications and Space Company is a strategic partner and major investor in ICO Global Communications, which will operate a global MSS system.

Because of its broad-ranging satellite interests, the Hughes family of companies has a vital interest in several recent proposals to auction spectrum for satellite services. Hughes strongly opposes those proposals because they would severely hamper the viability of U.S.-based satellite systems and the ability of the U.S. satellite industry to generate new economic growth and compete on a global scale. To the extent that the Commission nevertheless decides to auction spectrum for satellite services, Hughes submits these limited comments to ensure that the competitive bidding procedures that the Commission ultimately adopts accurately reflect the capital-intensive nature of the satellite industry.

II. Competitive Bidding Procedures Are Inappropriate for Licensing Satellite Services

In several prior proceedings, Hughes has strongly urged the Commission not to use competitive bidding to award satellite licenses.² As they noted in those submissions, competitive bidding will impede the continued viability of the U.S. satellite industry domestically and around the world. The Commission's proposals to establish general competitive bidding procedures that could apply to all potentially auctionable services, including satellite services, raise the very same concerns.

To the extent that the Commission contemplates auctioning licenses for certain satellite services, Hughes urges the Commission to tread with caution. For decades, the Commission's touchstone in establishing licensing procedures for satellite services has been to seek ways to avoid the characterization of satellite applications as "mutually exclusive." There is no reason to jettison the existing, successful policies and procedures on which satellite operators long have relied, such as the well-established processing round procedures, and instead to test a competitive bidding process to license satellites. In fact, the Commission's statutory mandate allowing the use of competitive bidding in cases of mutual exclusivity specifically obligates the Commission to "use engineering solutions, negotiation, threshold qualifications, service

² See Comments of Hughes Communications Galaxy, Inc., *Processing of 1994-1995 Domestic Fixed-Satellite Applications*, Rept. No. SPB-25 (Sept. 25, 1995); Comments of Hughes Communications Galaxy, Inc., *Rulemaking to Amend Parts 1, 1, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services* (Sept. 7, 1995); Comments of Hughes Telecommunications and Space Company, *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service* (May 5, 1995).

regulations, and other means in order to avoid mutual exclusivity.”³ At a minimum, the statute requires the Commission first to afford satellite applicants the flexibility to resolve any mutual exclusivity that possibly could arise through sharing, technical and operational procedures, and financial qualifications standards. The Commission should continue to use every means of avoiding mutual exclusivity among satellite applicants before resorting to the use of auctions.

Significant policy reasons also make the implementation of competitive bidding procedures to award satellite licenses highly inappropriate. The Commission consistently has recognized that the high risk, large capital investment requirements -- such as the \$200-300 million that it typically costs to construct, launch, and operate a single FSS satellite for one year -- and long lead times that are inherent in the satellite industry require the Commission to adopt flexible licensing procedures. With the limited exceptions of the upcoming subscriber-specific digital audio radio service auction⁴ and the 1995 auction conducted for two orbital locations for the provision of subscriber-specific DBS services in the U.S., the Commission has followed these policies in licensing satellite services. Hughes urges the Commission to continue to follow the same principles that have allowed the efficient and fair assignment of satellite spectrum and have enabled the development of a vibrant, competitive U.S. satellite industry.

In addition, a U.S. auction of satellite spectrum could have ramifications for the licensing procedures of foreign countries. If the U.S. were to adopt a policy of auctioning

³ 47 U.S.C. § 309(j)(6)(E). The statute further permits competitive bidding only where the spectrum for which the applications are filed is or will be used primarily for subscriber-based services. *Id.* § 309(j)(2)(A). Most satellite services are not likely to involve primarily the provision of service to subscribers.

⁴ “FCC Announces Auction of Satellite Digital Audio Radio Service,” *Public Notice*, DA 97-477 (rel. Mar. 6, 1997).

satellite licenses, other countries would be encouraged to use auctions as well or to impose fees based on the "value" of the spectrum established in the U.S. to award U.S.-based systems the right to serve the foreign country. Indeed, other countries already are following the Commission's lead by auctioning spectrum for various telecommunications services, such as paging, cellular and other wireless services. If other countries also were to copy a Commission policy of auctioning spectrum for satellite services, the costs of deploying global systems -- even assuming the global system operator would prevail in each auction in each country -- would be prohibitively high. Plainly, the U.S. satellite industry could not remotely afford having to pay in country after country around the world even fractions of amounts such as the almost \$700 million that MCI paid for one U.S. DBS orbital slot through the use of competitive bidding. The substantial investments that many of the Hughes companies and other U.S. satellite operators have made to develop global systems thus would be lost.

Moreover, the use of auctions for satellite licenses would unduly increase the cost of satellite services and place these services at a cost-competitive disadvantage compared to terrestrial technologies. In contrast to terrestrial systems that serve a limited geographic area, such as PCS and MMDS systems, satellite systems require substantial investor commitment around the world. Open-ended capital requirements and uncertainty associated with auctions will affect the financial viability of satellite ventures. As a result, systems in which the capital requirements are certain will be favored as investors divert resources from satellite-based services in favor of terrestrial services with known costs. The use of auctions for satellite services thus will retard the development and deployment of new satellite technologies, products and services.

Accordingly, the Commission should determine that competitive bidding procedures are an inappropriate method of licensing the use of satellite spectrum.

III. Comments on Part 1 Proposals

For the reasons set forth above, Hughes submits that there are compelling reasons not to use competitive bidding procedures to award licenses for satellite services. To the extent that the Commission nevertheless decides to auction licenses for certain satellite services, the Commission first should undertake a service-specific rulemaking proceeding to establish competitive bidding procedures that recognize the capital-intensive nature of satellite services. In the meantime, Hughes addresses below certain of the procedural proposals raised in the *Part 1 Notice*. Even assuming the Commission determines to employ competitive bidding in the satellite context, substantial further review of these and other procedures clearly is necessary before the Commission would be in a position to implement such procedures for satellite services.

1. Application Issues

In the *Part 1 Notice*, the Commission requested comment on whether standard ownership disclosure requirements should be imposed for all potentially auctionable services. In the satellite context, Hughes believes that the submission of detailed ownership information is essential. The Commission historically has acknowledged that the construction, launch and operation of a satellite system is extremely capital intensive and has insisted that satellite applicants satisfy rigorous financial qualification requirements.⁵ The Commission's ownership

⁵ See, e.g., Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 96-1943 (rel. Nov. 21, 1996); Application of
(continued...)

disclosure requirements should demand a sufficient showing of an applicant's financial qualifications to ensure that only serious, qualified applicants are eligible to participate at auction and in the provision of service.

As the Commission correctly observed, however, the imposition of ownership disclosure requirements could result in duplicative and unnecessarily burdensome filings.⁶ Hughes supports the Commission's proposal to streamline its application procedures by establishing a central database of licensee and bidder data. After applicants and licensees submit initial ownership information, the Commission proposes that they be required only to update the ownership information in the database, or certify that there have been no changes to the data previously submitted.⁷ Hughes concurs with the Commission's tentative conclusion that such an approach would minimize the administrative burden on both applicants and the Commission.

2. Payment Issues

The Commission also requested comment on whether certain modifications to its payment rules may be appropriate.⁸ Specifically, the Commission asked whether it should

(...continued)

Orion Network Systems, Inc. for Authority to Construct, Launch and Operate a Space Station in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 96-1938 (rel. Nov. 21, 1996); see Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5948-54 (1994); *In re Licensing Space Stations in the Domestic Fixed-Satellite Service*, 68 Rad. Reg. 2d 1267, 1268 (P&F) (1985).

⁶ *Part 1 Notice*, FCC 97-60, at ¶ 54.

⁷ *Id.*

⁸ *Id.* at ¶¶ 56-78

impose a late fee where winning bidders make their final payments or second down payments after the applicable deadline. Hughes believes that rigorous enforcement of the Commission's payment deadlines is critical to preserve the integrity of the auction and licensing process by ensuring that applicants meet the necessary financial qualifications. Hughes thus supports the Commission's proposal to impose a significant late fee to the extent that an applicant misses a payment deadline. Such a fee should be large enough (between 5 and 10 percent) to discourage late payments and to compensate the government for administrative expenses incurred in recouping the payment. Particularly in light of the capital-intensive nature of the satellite industry, rigorous enforcement of payment deadlines and the imposition of late fees are critical.

3. Competitive Bidding Design, Procedure and Timing Issues

a. Competitive Bidding Methodology

In the portion of the *Part 1 Notice* adopted by Order, the Commission retained its discretion to select among several auction methodologies, including sequential multiple round auctions, to award licenses for services subject to competitive bidding.⁹ In general, Hughes believes that a sequential multiple round auction would be the most appropriate method of auctioning licenses in the satellite context. The Commission has determined that a simultaneous multiple round auction is more appropriate where the values of the licenses being auctioned are interdependent and there are significant synergies between and among licenses. With limited exceptions, however, Hughes expects that there would not be significant synergies between licenses for satellites at different orbital locations. Under such circumstances, the Commission

⁹ *Id.* at ¶ 6.

previously has concluded that auctioning licenses sequentially is the preferred auction methodology.¹⁰

b. Duration of Bidding Rounds

The Commission also solicited comment on whether “real time” bidding, which would allow bidders to submit or withdraw a bid on a continuous basis during a given round, would be an appropriate means to hasten the pace of an auction (particularly in a simultaneous multiple round bidding environment).¹¹ Hughes supports the Commission’s efforts to reduce the length of spectrum auctions, without sacrificing the economic efficiency of the assignment process.¹² In the satellite context, Hughes expects that the Commission could achieve this goal by shortening the duration of individual bidding rounds. Shorter bidding rounds likely would speed the pace of the auction. In addition, Hughes anticipates that shorter bidding rounds would inhibit bidders’ efforts to “game” the auction process and could provide bidders an incentive to come to the auction prepared to reach their bottom line quickly.

c. Opening Bids and Bid Increments

In the *Part I Notice*, the Commission requested comment on whether it may be appropriate to establish minimum opening bids, noting that a minimum opening bid could increase the likelihood that the public would receive fair market value for the spectrum being auctioned and help an auction move more swiftly.¹³ Hughes generally opposes the imposition of

¹⁰ Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, IB Docket No. 95-168, FCC 95-507 at ¶ 167 (rel. Dec. 15, 1995).

¹¹ *Part I Notice*, FCC 97-60 at ¶ 81.

¹² *Id.*

¹³ *Id.* at ¶ 86.

a minimum opening bid. Rather, Hughes believes that bidders are better able to determine the value of the licenses being auctioned, and that other bidding procedures could more effectively ensure that the auction proceeds at a swift pace. Similarly, Hughes believes that the bid levels in a given round are best determined by the bidders and therefore opposes the imposition of a maximum bid increment.

IV. Conclusion

For the foregoing reasons, the Commission should not employ competitive bidding in the satellite context. If the Commission nevertheless determines to do so, it should initiate a service-specific rulemaking proceeding and adopt rules consistent with these Comments.

Respectfully submitted,

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